

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

BUILD-A-BEAR WORKSHOP, INC.,                          )  
    )  
Plaintiff,   )  
  )  
vs.    ) Case No. 4:24-cv-00211-MTS  
  )  
KELLY TOYS HOLDINGS, LLC; et al.,                    )  
  )  
Defendants.    )

**PLAINTIFF BUILD-A-BEAR WORKSHOP, INC.’S NOTICE OF  
DEFENDANTS’ AMENDED PLEADING IN LATER-FILED, BAD FAITH LAWSUIT**

Build-A-Bear Workshop, Inc. (“Build-A-Bear”) provides notice that Defendants, as plaintiffs in *Kelly Toys Holdings, LLC, et al. v. Build-A-Bear Workshop, Inc.*, No. 2:24-CV-1169 (C.D. Cal.) (the “California Lawsuit”), filed an Amended Complaint on March 21, 2024 (the “Amended Complaint”), a copy of which is attached hereto as Exhibit A. In connection with this Notice, Build-A-Bear states:

1. Build-A-Bear filed a Motion to Dismiss the California Lawsuit, with argument set for mid-May 2024. (*See* ECF No. 30 at 4; ECF No. 31 at 5.)
2. On March 5, 2024, the Central District of California dismissed parallel claims for trade dress infringement in *Kelly Toys Holdings, LLC et al. v. Zuru, LLC*, No. 2:23-cv-09255-MCS-AGR, for failure to state a claim, wherein the Court held that “the claimed trade dress description is too broad and ambiguous to form the basis of a plausible claim for trade dress infringement and therefore does not satisfy the requirements of Rule 8.” (ECF No. 31-2 at 5.)
3. Rather than respond to Build-A-Bear’s Motion to Dismiss the California Lawsuit and presumably in view of the Central District of California’s Order dismissing the deficient trade dress claims in *Zuru*, Defendants have now filed the attached Amended Complaint against Build-A-Bear in the California Lawsuit.

4. The Amended Complaint contains yet another description of Defendants' asserted trade dress in their Squishmallows product line, in addition to the at least twelve (12) different trade dress descriptions previously proffered by Defendants. (*Compare* attached Amended Complaint at ¶67 with ECF No. 1 at ¶27(1)-(12).)

5. As articulated in Build-A-Bear's Complaint here, Defendants have continually presented a moving target by failing to consistently and adequately describe exactly what they believe constitutes their purported, common law trade dress. Defendants clearly cannot articulate a "final" version of that trade dress and instead constantly change their descriptions of what their trade dress right purportedly are. Build-A-Bear and many others have therefore been forced to play a game of judicial whack-a-mole. (*See* ECF No. 1 at ¶¶26-29, 61-64.)

6. With yet another imagined version of Defendants' alleged trade dress, the Amended Complaint in the California Lawsuit confirms that Defendants will continue to invent new descriptions of their asserted trade dress rights unless a Court definitely declares whether Defendants have any trade dress rights at all, or whether these purported rights are in fact illusory, as Build-A-Bear maintains.

7. For these additional reasons, this Court should enjoin Defendants from proceeding with the California Lawsuit and settle the issue, once and for all, through a declaratory judgment here that Defendants have no valid trade dress rights in their Squishmallows product line.

Respectfully submitted,

Dated: March 25, 2024

**LEWIS RICE LLC**

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